



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Desktop Alert, Inc.

**File:** B-408707

**Date:** November 15, 2013

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Howard Ryan, Desktop Alert, Inc., for the protester.  
JoAnn Melesky, Esq., Department of Defense, Defense Information Systems Agency, for the agency.  
K. Nicole Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging solicitation of one month delivery order for renewal of brand-name emergency mass notification software system is denied where the agency is procuring the services using simplified acquisition procedures and has adequately justified the use of its approach under the procedures applicable to simplified acquisitions.

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### DECISION

Desktop Alert, Inc., of Chatham, New Jersey, protests the terms of request for quotations (RFQ) No. HC1028-13-T-0163, issued by the Department of Defense, Defense Information Systems Agency, for AtHoc emergency mass notification software to support the Air Force Materiel Command (AFMC). The protester argues that the solicitation's brand-name requirement improperly restricts competition.

We deny the protest.

### BACKGROUND

The agency issued the RFQ on July 31, 2013, as a small business set-aside, for the issuance of a one month (August 9 through September 8) fixed-price delivery order to renew the AtHoc mass notification software system in order to bridge the gap between the expiration of the agency's current AtHoc software

contract and the competitive award of a contract consolidating all emergency notification systems across the Air Force's major commands.<sup>1</sup> Agency Report (AR), Justification and Approval (J&A). The solicitation, which was limited to authorized AtHoc resellers--AtHoc owns all proprietary rights to its source code--had an estimated value of approximately \$65,000. Based on the dollar value of the procurement, the Air Force issued the RFQ using the simplified acquisition procedures established under Federal Acquisition Regulation (FAR) Part 13.<sup>2</sup>

Quotes were due August 5, and performance was to begin on August 9. *Id.* On August 2, the protester filed an agency-level protest, arguing that the solicitation improperly limited competition by requiring only the brand-name AtHoc software system. Agency Level Protest, at 1. That protest was denied on August 9 and the same day, the agency issued the delivery order to one of the multiple vendors, which submitted quotes in response to the RFQ. This protest followed on August 12, also challenging the decision to restrict competition to the AtHoc brand-name software system.<sup>3</sup> Protest, at 1.

## DISCUSSION

Desktop Alert, which has created and supports its own emergency mass notification software system, challenges the agency's limitation of sources on a brand name basis to AtHoc resellers. In this regard, the protester argues that the solicitation is unduly restrictive of competition since it does not permit other potentially qualified vendors of similar software systems to compete.<sup>4</sup>

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<sup>1</sup> Initially, the RFQ called for a one year performance period. It was amended on August 2, however, changing the period of performance to one month. AR, Tab 2, Amendment, at 1.

<sup>2</sup> The simplified acquisition threshold is \$150,000. FAR § 2.101.

<sup>3</sup> The agency advised our Office that the contract was completed on September 8.

<sup>4</sup> The protester also argues that the solicitation was flawed in other respects. The protester is not a registered AtHoc seller, however, and, in light of our determination that the brand-name restriction was reasonable, the protester is not an interested party to pursue these other issues. Under our Bid Protest Regulations, only an "interested party" may maintain a protest; an interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract, or the failure to award a contract. 4 C.F.R. §§ 21.0(a)(1); 21.1(a) (2013). Where a firm would not be in line for award in the event its protest is sustained, that firm lacks the direct economic interest necessary to maintain a protest. PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 3.

The simplified procedures established under FAR Part 13 are designed to promote efficiency and economy in contracting, and to avoid unnecessary burdens for agencies and contractors, where, in cases like this, the value of the acquisition is less than \$150,000. See FAR § 2.101; see also 10 U.S.C. § 2304(g)(1). When using simplified acquisition procedures, agencies are only required to obtain competition to the “maximum extent practicable.” 10 U.S.C. § 2304(g)(3); FAR § 13.104; B&S Transport, Inc., B-407589, Dec. 27, 2012, 2012 CPD ¶ 354 at 2. In a simplified acquisition, an agency can limit a solicitation to a brand-name item when “the basis for not providing maximum practicable competition is documented in the file [in accordance with FAR § 13.106-1(b)] or justified when the acquisition is awarded using simplified acquisition procedures.” FAR § 11.105(a)(2)(ii).

Under FAR § 13.106-1(b), contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, brand name or industrial mobilization).” FAR § 13.106-1(b)(1). In such cases, we review the decision to limit the procurement to a brand-name for reasonableness. See Critical Process Filtration, Inc., B-400746 et al., January 22, 2009, 2009 CPD ¶ 25 at 3.

Here, the agency’s J&A, issued in accordance with FAR § 13.106-1(b) and posted on FedBizOpps, explains that the contemplated one month contract will “provide uninterrupted software maintenance from a previous contract” and will “follow-on to the existing contract.” Id. According to the J&A, the agency is experiencing delays related to the on-going effort intended to competitively award a contract consolidating all of the major command emergency mass notification systems, and that “it would be extremely difficult and costly to transition to a new product” while waiting for the completion of the consolidated effort. Id. In this regard, the J&A further explains that if the agency were to change to different software, it “would have to retrain the field on the use of a different product and possibly change the configurations of the servers supporting this application.” Id.

Based on the agency’s J&A, the RFQ was intended to serve simply as a short-term bridge contract to allow the agency to maintain the status quo while working toward the competitive award of a longer term consolidated emergency notification system solution. In light of the anticipated competitive award and the associated delays in the award of that contract, the short duration of the requirement contemplated by the RFQ, and the potential disruption and costs associated with shifting to an entirely new software platform, we have no basis to conclude that the agency acted unreasonably in limiting the solicitation to the AtHoc brand-name software system.

The protest is denied.

Susan A. Poling  
General Counsel